

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

BETTE EAKIN, *et al.*,

*Plaintiffs,*

v.

ADAMS COUNTY BOARD OF  
ELECTIONS, *et al.*,

*Defendants.*

Case No. 1:22-cv-340

**DEFENDANTS ALLEGHENY, BUCKS, CHESTER, MONTGOMERY,  
AND PHILADELPHIA COUNTY BOARDS OF ELECTIONS'  
SUPPLEMENTAL RESPONSE TO INTERVENOR-DEFENDANTS'  
MOTION FOR SUMMARY JUDGMENT**

During these proceedings, the Philadelphia, Allegheny, Bucks, Chester, and Montgomery County Boards of Elections (“Responding Counties”) have “urge[d] this Court to deny the Intervenor-Defendants’ motion for summary judgment and to declare that the handwritten date requirement should not be enforced in upcoming elections because it violates the Civil Rights Act as a matter of law.” ECF No. 315 at 3. In doing so, Responding Counties have not taken a position on the Plaintiffs’ constitutional claim, or on the standing and private-right-of-action arguments raised by the Intervenor-Defendants.

In parallel proceedings, this Court issued a memorandum opinion and order concluding correctly that enforcement of the handwritten date requirement violates the Materiality Provision of the Civil Rights Act. ECF Nos. 347, 348, *NAACP v. Schmidt, et al.*, 1:22-cv-339. “[G]iven the pending cross motions for summary judgment in this case raise many of the same arguments and defenses,” this Court

ordered the parties “to supplement their summary judgment filings before January 5, 2024.” ECF No. 348. Having reviewed this Court’s thorough memorandum opinion, Responding Counties stand by the positions they have taken in opposition to the Intervenor-Defendants’ motion for summary judgment (ECF No. 315) and reiterate their positions here.

*First*, Responding Counties agree with this Court’s conclusion in *NAACP v. Schmidt* that “the Commonwealth’s mandatory application of the Date Requirement is immaterial, violating the Materiality Provision of the Civil Rights Act.” ECF No. 347 at 76. *NAACP v. Schmidt, et al.*, 1:22-cv-339. *Second*, as a result, Plaintiffs in this action are likewise entitled to judgment as a matter of law on their Materiality Provision Claim, and the Intervenor-Defendants’ cross-motion for summary judgment on that claim should be denied. *Third*, Responding Counties continue to take no position on: (i) Plaintiffs’ standing, (ii) the enforceability of the Materiality Provision under 42 U.S.C. § 1983, or (iii) the viability of Plaintiffs’ constitutional claim. *Finally*, because “this case raise[s] many of the same arguments and defenses” addressed in this Court’s ruling in *NAACP v. Schmidt*—which is currently on appeal to the Third Circuit and is scheduled for expedited resolution—this Court should wait until the pending appeal has been resolved before ruling on the parties’ pending cross-motions for summary judgment in this action.

Dated: January 4, 2024

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Respectfully submitted,

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**CERTIFICATE OF CONSENT**

I hereby certify that I have obtained the consent of the non-filing signatories to this Supplemental Response to Intervenor-Defendants' Motion for Summary Judgment from the above-listed counsel for Defendants the Allegheny, Bucks, Chester, and Montgomery County Boards of Elections.

Dated: January 4, 2024

By: /s/ Ilana H. Eisenstein

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